15-84-LI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 8, 1984

Mr. John M. La Rose, Chairman
Michigan Townships Association
3121 W. Saginaw Street
Lansing, Michigan 48917

Dear Mr. La Rose:

This is in response to your two inquiries concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to the Michigan Townships Association.

In your January 10, 1984, letter you ask:

> "In what instances would an elected or appointed township official or employee fail to be exempt from the Lobby Registration Act?"

Attached you will find a letter dated January 13, 1984, to Mr. Don M. Schmidt, which answers similar concerns relating to city officials. Under the Act there is no difference between city and township officials and employees. Also relevant to your question is the attached letter to Hannes Meyer, Jr., dated February 3, 1984. In summary, these letters indicate elected township officials (acting in the course of their offices and not compensated other than as officials) are exempt from the Act as are appointed officials who serve in autonomous, policymaking positions.

Elected township officials are not exempt when acting outside the scope of their offices or when compensated beyond the compensation provided by law for their offices. Appointed township officials are exempt only if they serve in autonomous, policymaking capacities and not under the direction or control of the elected township board.

In your December 22, 1983, letter you state:

> "We would like an opinion on whether the Michigan Council on Intergovernmental Relations must register as a lobbyist. Although we communicate with public officials, the communication is financed by the four associations which belong to MCIR (Michigan Townships Association, Michigan Municipal League, Michigan Association of

> Counties, and Michigan Association of Regions). MCIR writes to legislators and other public officials and conducts an annual legislative reception, but it has no authority to expend funds for lobbying purposes."

Like any other person, MCIR must register as a lobbyist if it expends more than $1,000.00 for lobbying in a twelve month period or more than $250.00 for lobbying a single public official in a twelve month period. Expenditures made writing to Legislators and other public officials for the purpose of influencing legislative or administrative action are counted toward these thresholds.

An annual legislative reception was discussed in a declaratory ruling issued to Mr. S. Don Potter on February 7, 1984. A copy is attached. While you did not give any facts regarding MCIR's reception, this declaratory ruling should provide some guidance for you.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.

14-84-LI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE

LANSING

MICHIGAN 48918

March 1, 1984

MAR 2 1984

George N. Holcomb
Assistant to the President
Ferris State College
Big Rapids, MI 49307

Dear Mr. Holcomb:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to members of the Ferris State College Board of Control. Specifically, you ask for confirmation of your "understanding that members of the Ferris State College Board of Control are state public officials and, therefore, are exempt from becoming a lobbyist or a lobbyist agent under the terms of the Act." You also ask how Ferris State College is affected by board members' lobbying activities.

Attached is a letter to Mr. Kenneth F. Light, dated January 24, 1984, relating to colleges and college officials. As that letter explains, members of college and university boards of control, other than the boards of the University of Michigan, Michigan State University and Wayne State University, are appointed by the governor. Section 5(7)(c)(v) of the Act (MCL 4.415) specifically states that appointed members of state level boards or commissions are not excluded from the definitions of "lobbyist" and "lobbyist agent." Consequently, members of the Ferris State College Board of Control who receive compensation or reimbursement in excess of $250 in a 12-month period for lobbying (excluding travel expenses) must register with the Department of State as lobbyist agents.

Ferris State College, on the other hand, is required to register as a lobbyist if, in any 12-month period, it expends more than $1,000 for lobbying or more than $250 on lobbying a single public official. These monetary thresholds are calculated pursuant to rule 21, 1981 AACS R4.421, which states:

> "Rule 21. For the purpose of determining whether a person's expenditures for lobbying are more than $1,000.00 in value in any 12-month period, or are more than $250.00 in value in any 12-month period if expended on lobbying a single public official, the following expenditures shall be combined:
>
> (a) Expenditures made on behalf of a public official for the purpose of influencing legislative or administrative action.

(b) Expenditures, other than travel expenses, incurred at the request or suggestion of a lobbyist agent or member of a lobbyist, or furnished for the assistance or use of a lobbyist agent or member of a lobbyist while engaged in lobbying.
(c) The compensation paid or payable to lobbyist agents, employees of the lobbyist, and members of a lobbyist for that portion of their time devoted to lobbying."

Thus, if Ferris State College compensates or reimburses members of the Board of Control, employees of the college (other than the President), or other lobbyist agents (such as a multi-client lobbying firm) in a combined amount of more than $1,000 for lobbying or more than $250 on lobbying a single official, the college must register as a lobbyist and file periodic reports detailing its lobbying expenditures as required by the Act.

This response is informational only and does not constitute a declaratory ruling.

Sincerely,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jep

13-84-LI

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE

LANSING
MICHIGAN 48918

March 1, 1984

Laura J. Hess, Attorney
Public Affairs Coordinator
UCS of Metropolitan Detroit
51 W. Warren
Detroit, MI 48201

Dear Ms. Hess:

This is in response to your request for information concerning the responsibilities of community agencies under the lobby act (the "Act"), 1978 PA 472, in regard to certain transactions.

Your question is set out below:

> What is the responsibility of an agency that provides rent either free or at a reduced cost to another agency that lobbies public officials. In some instances, the issues on which the receiving agency lobbies are related to those issues championed by the giver agency and in other instances they are not. The same question applies for those asgencies that make phone service or other kinds of service or equipment available to a lobbying organization."

Your letter further clarifies that the responsibilities to which you are referring are those relating to registration and perhaps reporting requirements under the Act.

It appears that the "giver agency" in your set of facts is concerned about a possible expenditure. The definition of "expenditure" in section 3(2) of the Act (MCL 4.413) includes "anything of value." An abatement of rent and free use of telephone and other equipment is indeed something of value. However, if the expenditure is not made for the purpose of lobbying, it is not an "expenditure" under the Act and is not reportable. Your letter does not indicate that the "receiving agencies" are lobbying on behalf of the "giver agency." Consequently, since there is no lobbyist-lobbyist agent relationship between the agencies, neither agency should report the benefits given or received. The "giver agency" is not required to register as a lobbyist based solely on the transaction cited in your letter.

This letter is informational only and does not constitute a declaratory ruling.

Sincerely,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jep

12-84-LI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 1, 1984

Senator John M. Engler
Office of the Majority Leader
State Capitol Building
Lansing, Michigan 48909

Dear Senator Engler:

This is in response to your letter regarding the way in which the lobby act, 1978 PA 472 (the "Act"), is being implemented by the Department of State.

Three areas are specifically mentioned in your letter as follows:

> "It is my understanding that except for specific and narrow exemptions and exceptions, the Lobby Act was designed to regulate all attempts to influence administrative and legislative action through the use of direct communication. The Legislature and the Governor in enacting the lobbying law were well aware that a significant amount of lobbying is carried out, properly, by employees in the various departments and agencies of state government which seek to influence the policy decisions of government agencies.
>
> With this background in mind, I request that you provide me with an explanation as to the purpose, background and reasoning behind the decision of the Department of State to impose narrowing interpretations in the following areas:
>
> 1. The exemption of non-policy making boards and commissions from the scope of the Act;
>
> 2. The exemption for intra-departmental communications designed to influence administrative action; and
>
> 3. The exemption for certain communications required by statute."

1. Non-policy making bodies.

Your letter takes exception to the language of Department of State publications which indicate that in order to be a public official a board or commission member must be on a board or commission with "policymaking authority" ("Overview of Lobby Registrations Act" p. 2").

In determining that a board or commission member may be lobbied, a determination must be made whether the individual is a "public official" pursuant to the Act. "Public official" and "official in the executive branch" are defined in sections 6(2) and 5(9) of the Act (MCL 4.416 and 4.415) as follows:

> "Sec. 6. (2) 'Public official' means an official in the executive or legislative branch of state government."
>
> "Sec. 5. (9) 'Official in the executive branch' means the governor, lieutenant governor, secretary of state, attorney general, member of any state board or commission, or an individual who is in the executive branch of state government and not under civil service. This includes an individual who is elected or appointed and has not yet taken, or an individual who is nominated for appointment to, any of the offices enumerated in this subsection. An official in the executive branch does not include a person serving in a clerical, nonpolicymaking, or nonadministrative capacity."

An entity with only advisory authority is "nonpolicymaking, or nonadministrative" in nature. The function of such bodies is to advise a public official of proposals or proposed actions. Lobbying under the Act consists of direct communication with a public official for the purpose of influencing legislative or administrative action (MCL 4.415). Reading the Act to include communications with advisory groups would expand the Act to encompass indirect lobbying. Such a reading would broaden the Act beyond its parameters and might subject it to a challenge on constitutional grounds.

2. Intra agency communications.

Contrary to your statement the Department has not said that all communications within a department are excluded from the definition of lobbying. The Department has stated that communications between autonomous agencies, even agencies in the same department, are lobbying if the other criteria of the Act are met. However, the Department has concluded that communications between civil service employees of an autonomous agency and the public officials charged with administering the agency are not lobbying.

The position the Department has taken on intra agency communications is consistent with both the letter and spirit of the Act. Section 6(1) of the Act defines the term "person" as follows:

> "Sec. 6. (1) 'Person' means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business

> trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly, including a state agency or a political subdivision of the state." (emphasis added)

A state agency is clearly a person pursuant to section 6(1).

If the Department concluded that intra agency communications were lobbying it would be contrary to this definition because a person would have to register and report for lobbying itself.

To require registration and reporting under the Act by civil service employees who communicate with the public officials who administer the employing agency would work to impede intra-agency communication. A public official is entitled to expect frank and open communication from civil servants in the agency the official administers. A reading of the Act which encompasses communications between employees and their employers goes far beyond the Act's intent. It presupposes that an executive agency is required to report expenditures made in the course of implementing statutes which it is charged with administering.

3. The formulation of the state budget.

The Department is currently formulating a comprehensive response to questions raised by the Governor's staff and various departments with respect to the formulation of the annual state budget. Rather than dealing with your general questions in this area the Department will soon be providing a detailed response with respect to the budgetary process.

This response is informational only and does not constitute a declaratory ruling as none was requested.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE

LANSING
MICHIGAN 48918

March 1, 1984

Gregory K. Merryman
Appeals and Research Legal Staff
General Motors Building
3044 W. Grand Boulevard
Detroit, MI 48202

Dear Mr. Merryman:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the "Act"), 1978 PA 472, to General Motors Corporation and its employees. The specific facts and questions you raise are set out and answered below.

I.

Section 3 of the Air Pollution Act, 1965 PA 348, as amended, (MCL 335.13) provides for the creation of an eleven member air pollution control commission. Two members of the commission are required to be "representatives of industrial management, 1 of whom shall be a registered professional engineer trained and experienced in matters of air pollution measurement and control."

One industry representative appointed to the Michigan Air Pollution Control Commission (MAPCC) is an employee of General Motors. As an appointed member of a state level board or commission, the employee is an official in the executive branch of state government who can be lobbied under the Act. General Motors itself is a lobbyist as defined in section 5(4).

Your first question is whether General Motors Corporation as a lobbyist is required to report the employee's salary and fringe benefits as financial transactions. In the attached letter to Mr. George F. Hill, dated February 22, 1984, the Department indicated that wages and expenses paid to an employee who is a public official are financial transactions in the ordinary course of business. As such, salary and fringe benefits paid to a General Motors employee who is an official are exempt from disclosure under section 8(1)(c) of the Act (MCL 4,418), provided the employee's salary and benefits do not exceed the consideration received by the company.

Your remaining questions concern communications between the employee/official and his co-workers. Specifically, you state:

> "By design of MCLA §336.13, the employe's job involves matters relating to air pollution control. In the course of fulfilling his employment responsibilities, the employe may discuss air pollution control matters with other General Motors employes. Would such discussion constitute lobbying if they were related to issues that may be of concern to the MAPCC, but did not cover specific proposals pending before the MAPCC? Would such discussions constitute lobbying if they were part of an attempt to develop the position of General Motors on issues pending before the MAPCC?"

"Lobbying" is defined in section 5(2) of the Act as "communicating directly with an official in the executive branch of state government . . . for the purpose of influencing legislative or administrative action."

Definitions of "administrative action" and "legislative action" are found in sections 2(1) (MCL 4.412) and 5(1), respectively. These sections state, in relevant part:

> "Sec. 2. (1) 'Administrative action' means the proposal, drafting, development, consideration, amendment, enactment, or defeat of a non-ministerial action or rule by an executive agency or an official in the executive branch of state government."

> "Sec. 5. (1) 'Legislative action' means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature."

In your first hypothetical, the employee who is a public official communicates with other General Motors employees about air pollution control matters which bear no relationship to issues pending before the MAPCC. Your question, rephrased, is whether General Motors employees who communicate with the employee/official in these circumstances are engaged in lobbying.

Discussions among co-workers are lobbying if they are for the purpose of influencing administrative or legislative action the employee may take as a public official. However, where there is no relevant issue before the MAPCC, the only administrative or legislative action possible is the proposal, drafting or development of a nonministerial action or rule, or the support of or opposition to a matter pending or proposed in the legislature. Therefore, General Motors employees who communicate with the employee/official are lobbying only if the communication is for the direct and express purpose of developing or intro-

ducing an issue for the MAPCC's consideration or encouraging the employee/official to support or oppose a legislative matter.

Your second hypothetical relates to the employee/official's involvement in "an attempt to develop the position of General Motors" on matters currently before the MAPCC. If General Motors has not decided to lobby on an issue, communicating with the employee/official for the purpose of assisting the company in deciding whether to lobby is not lobbying. However, if General Motors has decided to lobby for or against a matter, discussions which include the employee/official are lobbying and must be reported by the company.

This interpretation should not be construed as affecting conflict of interest issues or other matters regulated by the State Board of Ethics.

II.

General Motors Corporation also employs individuals who serve on the governing boards of Oakland University and Michigan Technological University. You ask whether these employees are public officials and whether they are engaged in lobbying when they attend and participate in Board of Trustee meetings. (The response in part I concerning financial transactions is applicable here and will not be repeated.)

Section 6(2) of the Act (MCL 4.416) states that a "public official" is an official in the executive or legislative branch of state government. Pursuant to section 5(9), "official in the executive branch" includes a member of any state board or commission. Article 5, §2 of the Constitution of 1963 indicates the governing bodies of institutions of higher education are agencies within the executive branch. Thus, a college or university board of control is a state board within the executive branch, and members of the board are public officials for purposes of the Act.

With respect to your second question, rule 25(2), 1981 AACS R4.425, provides:

> "Rule 25. (2) An appointed member of a state level board or commission is not a lobbyist agent merely because of membership on the board or commission. An appointed member of the board or commission is a lobbyist agent if the member engages in lobbying and his or her compensation or reimbursement for lobbying exceeds the amount prescribed in section 5 of the act."

This rule implies that communications between board members are not subject to the Act. However, if an appointed member of a state board is compensated or reimbursed by either the board or an employer for lobbying other public officials, the member may become a lobbyist agent as provided in section 5(5) of the Act, and the person compensating the board member must report the payment as an expenditure for lobbying.

III.

A General Motors employee is a member of the Governor's Executive Corps who has been assigned full time to the Department of Commerce. You ask whether this employee is a public official and whether the employee is a lobbyist agent for the company if the employee attempts to influence legislative or administrative action on behalf of the State.

Pursuant to section 5(9) of the Act, "official in the executive branch" includes an unclassified, policymaking employee but not "a person serving in a clerical, nonpolicymaking, or nonadministrative capacity." The Department of Commerce has provided the Secretary of State with the names of its policymaking employees, which are included in the list of public officials compiled by the Department of State. If General Motors' employee's name is not on the list, it is presumed the employee is not a public official because the Department of Commerce has determined the employee serves in a clerical, nonpolicymaking or nonadministrative capacity. Conversely, if the employee's name appears on the list, the employee is considered a policymaker by the Department of Commerce and therefore a public official for purposes of the Act.

Your second question is whether the employee, who is paid by General Motors, is a lobbyist agent for the company if the employee lobbies on behalf of the State. According to section 5(5) of the Act, a lobbyist agent is a person who is compensated or reimbursed for lobbying. Members of the Executive Corps are not paid by their private sector employers to lobby but to assist the State. Consequently, if your employee lobbies on behalf of the Department of Commerce or the State of Michigan, the employee is not a lobbyist agent for General Motors Corporation.

IV.

Your final questions concern General Motors employees who serve on the Governor's Commission on Jobs and Economic Development and that Commission's High Technology Task Force. Again, you ask whether these employees are public officials and whether they are engaged in lobbying when they fulfill their Commission duties.

The Commission on Jobs and Economic Development is a group created to advise the Governor of proposed actions and strategies relating to the economy. It is not empowered to take administrative action as that term is used in the Act.

In a letter to Senator John M. Engler, dated March 1, 1984, the Department indicated that commissions having only advisory authority are nonpolicymaking or nonadministrative in nature. Therefore, members of advisory groups are not public officials because they do not serve in policymaking capacities.

Advisory commission members are similar to other individuals employed in the Governor's office. That is, both are expected to provide information and advice

to the Governor and public officials within the Executive Office who are responsible for making policy. The Department has interpreted the Act as excluding communications between employees and the public officials for whom they work. As such, members of an advisory commission are not lobbying when they fulfill their duties as commissioners.

This response is a declaratory ruling relating to the specific facts and questions you have raised.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

15-84-LI

March 8, 1984

Mr. John M. La Rose, Chairman
Michigan Townships Association
3121 W. Saginaw Street
Lansing, Michigan 48917

Dear Mr. La Rose:

This is in response to your two inquiries concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to the Michigan Townships Association.

In your January 10, 1984, letter you ask:

> "In what instances would an elected or appointed township official or employee fail to be exempt from the Lobby Registration Act?"

Attached you will find a letter dated January 13, 1984, to Mr. Don M. Schmidt, which answers similar concerns relating to city officials. Under the Act there is no difference between city and township officials and employees. Also relevant to your question is the attached letter to Hannes Meyer, Jr., dated February 3, 1984. In summary, these letters indicate elected township officials (acting in the course of their offices and not compensated other than as officials) are exempt from the Act as are appointed officials who serve in autonomous, policymaking positions.

Elected township officials are not exempt when acting outside the scope of their offices or when compensated beyond the compensation provided by law for their offices. Appointed township officials are exempt only if they serve in autonomous, policymaking capacities and not under the direction or control of the elected township board.

In your December 22, 1983, letter you state:

> "We would like an opinion on whether the Michigan Council on Intergovernmental Relations must register as a lobbyist. Although we communicate with public officials, the communication is financed by the four associations which belong to MCIR (Michigan Townships Association, Michigan Municipal League, Michigan Association of

> Counties, and Michigan Association of Regions). MCIR writes to legislators and other public officials and conducts an annual legislative reception, but it has no authority to expend funds for lobbying purposes."

Like any other person, MCIR must register as a lobbyist if it expends more than $1,000.00 for lobbying in a twelve month period or more than $250.00 for lobbying a single public official in a twelve month period. Expenditures made writing to Legislators and other public officials for the purpose of influencing legislative or administrative action are counted toward these thresholds.

An annual legislative reception was discussed in a declaratory ruling issued to Mr. S. Don Potter on February 7, 1984. A copy is attached. While you did not give any facts regarding MCIR's reception, this declaratory ruling should provide some guidance for you.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

4-84-LD

LANSING

MICHIGAN 48918

March 16, 1984

Mr. Charles Nida
Honigman, Miller, Schwartz & Cohn
2290 First National Building
Detroit, Michigan 48226

Dear Mr. Nida:

This is in response to your request for a declaratory ruling concerning the application of the lobby act (the "Act"), 1978 PA 472, to the Michigan Thanksgiving Parade Foundation (the "Foundation").

The Foundation is a Michigan non-profit corporation which has been determined to be a charitable organization by the Internal Revenue Service and has also been licensed to solicit charitable contributions by the Michigan Attorney General. You indicate that "the purpose of the Foundation, in general, is to sponsor, coordinate and produce a Thanksgiving Day Parade for the benefit of the residents of the State of Michigan" and that the Board of Directors is composed of "community leaders, including a number of public officials." Further, you state that the Foundation has solicited and received contributions from the general public in the form of cash, goods and services and that "many of those contributions were made by businesses and individuals who would have been lobbyists or lobbyists agents had the Act then been applicable." It is your position that lobbyists and lobbyist agents who make such contributions should not be required to report such contributions as financial transactions under section 8(1)(c) of the Act (MCL 4.418).

Pursuant to section 8(1) of the Act (MCL 4.418), a lobbyist is required to file reports each January 31 and August 31. In addition to other information required by this section, each report must include the following:

> "Sec. 8. (1)(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist. agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated in which goods or services having value of at least $500.00 are involved. The account shall include the date and nature of the tran-

saction, the parties to the transaction, and the amount involved in the transaction. This subdivision shall not apply to a financial transaction in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist. This subdivision shall not apply to a transaction undertaken in the ordinary course of the lobbyist's business, in which fair market value is given or received for a benefit conferred."

The entire focus of the Act aims at disclosing relationships, financial and otherwise, between lobbyists or lobbyist agents and public officials. Funds solicited do not go to the Directors individually, and checks for contributions are not made out to any Director personally but to the Foundation. It therefore seems clear that, in the circumstances you relate, there is no "financial transaction . . . between the lobbyist or lobbyist agent . . . and public official" which might be reported. Any financial transaction would be between the lobbyist and the Foundation, and the role of the public official is simply as an intermediary who receives no gain or profit by the donation.

This response is a declaratory ruling relating to the facts and questions you have presented.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

5-84-LD

March 16, 1984

Ms. Sharon L. Kellogg
Chairperson
Michigan Information and Research Service, Inc.
410 Michigan National Tower
P.O. Box 1087
Lansing, Michigan 48901

Dear Ms. Kellogg:

This is in response to your request for a declaratory ruling concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to Michigan Information and Research Service, Inc. ("MIRS"). The specific facts and questions you raise are set out and answered below.

You indicate MIRS collects, reviews, indexes, and summarizes all pending and proposed action in the Michigan Legislature for the purpose of providing legislative information to its subscribers and clients. MIRS publishes the MIRS Legislative Report on a daily basis and makes available to its subscribers copies of bills, journals, analyses, and public acts. MIRS provides a complimentary copy of each issue of MIRS Legislative Report to each Legislator. MIRS occasionally purchases food and beverage for public officials "in the course of acquiring information for dissemination to its subscribers."

In addition, you indicate MIRS conducts research projects involving legislative matters on a contractual basis. These projects are prepared for clients and MIRS has no knowledge of whether the product delivered to the client will be used to influence legislative or administrative action.

> "1. Are MIRS officers and staff members considered working members of the press, as described in Section 5(7)(a), while engaged in collecting and disseminating news of legislative activities to the MIRS subscribers in the ordinary course of business?"

The Court of Appeals stated in Pletz v Secretary of State, 125 Mich App 335 (1983):

> "While the term 'working member' is a rather new expression, it seems clear that the Legislature intended to exempt the news media while disseminating news or editorial comment to the general public in the ordinary course of business." 125 Mich App 335, 362

MIRS employees are clearly working members of the press and MIRS is a publisher.

> "2. Is MIRS a lobbyist or lobbyist agent as those terms are defined in Section 5 of the Act?"

Section 5(7)(a) of the Act (MCL 4.415) expressly states: "Lobbyist or lobbyist agent does not include a publisher, owner, or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business." (emphasis added) To the extent MIRS is disseminating news or editorial comment it is not a lobbyist or lobbyist agent. In addition, the Court in Pletz stated:

> "We believe that the Legislature intended communications with public officials for purposes of gathering and disseminating news be outside the act's coverage.
>
> * * *
>
> The press exemption properly excludes the acts of talking and writing to public officials for purposes of gathering news and information for dissemination. Such communications fall outside the purview of the statute, since they are not made to influence administrative or legislative action." 125 Mich App 335, 361-362

Therefore, MIRS is not a lobbyist or lobbyist agent as a result of its direct communications with public officials when the purpose of the communication is to gather information.

In addition to the facts you provided which are summarized above, you indicated the following:

> "In the course of acquiring information for dissemination to subscribers, MIRS may communicate directly with officials in the legislative branch of state government and attempt to influence officials in the executive branch of state government with respect to (a) access to information or news and (b) equal treatment of MIRS staff as compared with other working members of the press.
>
> * * *
>
> MIRS does not now, and does not contemplate, communicating directly with public officials for the purpose of influencing legislative or administrative action on behalf of itself or its clients or subscri-

> bers except insofar as the communications are directly related to the activities of MIRS in collecting news and information for dissemination to its subscribers in the ordinary course of business."

To the extent MIRS communicates directly with officials in the executive and legislative branches for the purpose of influencing legislative or executive action (as opposed to gathering information), MIRS is lobbying. However, seeking equal access to legislative press facilities would not be a lobbying activity because that is so intimately intertwined with MIRS's efforts to gather and disseminate news that it falls within the press exception. Should MIRS spend $1,000 communicating directly with public officials for the purpose of influencing administrative or legislative action, MIRS would become a lobbyist and would be required to be registered. MIRS would also become a lobbyist if it meets the $250 threshold for lobbying a single public official.

> "3. Are the costs of a subscription to MIRS, which may exceed $1,000 per year, counted in determining whether a person meets the statutory threshold of lobbyist or lobbyist agent as provided in Section 5 of the Act?"

Section 5(4) indicates a lobbyist is a person whose "expenditures for lobbying" exceed a certain threshold. Lobbyist agent is defined in section 5(5) as a person who "receives compensation or reimbursement of actual expenses . . . for lobbying " in excess of $250 in a 12 month period. " Expenditures for lobbying" is defined in rule 1(d) (1981 AACS R4.411) to include:

> "(iv) An expenditure for providing or using information, statistics, studies, or analyses in communicating directly with an official that would not have been incurred but for the activity of communicating directly."

If the information contained in the MIRS Legislative Report would not have been purchased but for the direct communication, the cost of subscription would be counted toward the statutory thresholds. It is unlikely the purchase of a subscription to MIRS Legislative Report would meet the "but for" test as most subscribers would purchase the Report for activities not covered by the Act, such as being informed about what the Legislature is doing or gaining information which will help the subscriber decide whether to lobby.

However, the contractual work which MIRS performs may meet this test. For example, where a lobbyist or lobbyist agent desires to support a piece of legislation and contracts with MIRS for the purpose of compiling information to be used to bolster its position, the cost of the MIRS contract is an expenditure for lobbying which must be included in a report filed by the lobbyist or lobbyist agent or counted toward the threshold of a person who is not yet a lobbyist or lobbyist agent. Of course, MIRS does not become a lobbyist because it provides this information; if MIRS is already a lobbyist, the amount received for such a report would not be reported by MIRS.

"4. Is a lobbyist or lobbyist agent who subscribes to MIRS required to report the cost of the subscription in the lobbyist's or lobbyist agent's twice yearly report?"

As with the previous question, a subscription probably would not be purchased as a part of the specific direct communication which the lobbyist or lobbyist agent is making. Only if this expenditure does meet the "but for" test, would the lobbyist or lobbyist agent include the cost of the subscription in its bi-annual report.

"5. Is the value of compensation paid to a lobbyist agent for reading the MIRS Legislative Report required to be reported as a lobbying expenditure by the lobbyist employing the lobbyist agent?".

Normally, this compensation would not be considered an expenditure for lobbying. The lobbyist agent who reads MIRS Legislative Report on a regular basis, such as upon opening each day's mail, is not required to report this time.

However, where the lobbyist agent is reading the report as part of the agent's drafting of a letter to a public official or a paper which will be presented to a public official, then the compensation will be reported by both the lobbyist and the lobbyist agent. An example of this reportable time is where the lobbyist agent is going through back issues to find a quote by a public official or to determine how a Legislator voted on a bill so the Legislator can be reminded of his or her past position in a letter designed to influence future action. Again, the compensation is for lobbying only if it meets the "but for" test discussed above.

"6. Are expenditures for food and beverage for public officials which are incurred in the course of collecting information and news on legislative activities required to be reported?"

The Act requires lobbyists and lobbyists agents to report certain items pursuant to section 8 of the Act (MCL 4.418). Lobbyists and lobbyist agents must report "expenditures for food and beverage provided for public officials as specified in subsection (2)." There is no purpose test for this food and beverage report--it does not matter whether the expenditure for food and beverage was for the purpose of lobbying or for some other purpose. However, these food and beverage expenditures are only reported by lobbyists and lobbyist agents. Unless MIRS is a lobbyist or lobbyist agent, it would never need to report anything under the Act. Should MIRS's expenditures for lobbying exceed the $250 or $1,000 thresholds as discussed in the answer to question 2, MIRS would be a lobbyist and would report expenditures for food and beverage provided public officials even though the purpose of the meal was for MIRS to collect information as a member of the press.

This response is a declaratory ruling relating to the specific facts and questions you have raised.

Sincerely,

Richard H. Austin
Secretary of State

RHA/cw